

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 06, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DUSTIN ALAN ASHLOCK,

Defendant.

No. 1:21-CR-02041-SAB-1

ORDER GRANTING
DEFENDANT'S MOTION TO
EXPEDITE AND GRANTING IN
PART AND DENYING IN PART
DEFENDANT'S MOTION TO
AMEND DETENTION ORDER

ORDER SETTING CONDITIONS
OF RELEASE

ECF Nos. 33, 35

USMS ACTION REQUIRED*

Before the Court are Defendant's Motion to Amend Detention Order (ECF No. 33) and related Motion to Expedite (ECF No. 35). Defendant was represented on these Motions by court-appointed attorney Richard Smith.

1 On August 31, 2022, Defendant waived the right to a detention hearing
2 pursuant to Federal Rule of Criminal Procedure 32.1(a)(6), and the Court
3 subsequently granted the United States' Motion for Detention (ECF No. 7). ECF
4 No. 13. However, Defendant later filed a Motion to Reopen Detention (ECF No.
5 29), and the Court granted his release to inpatient treatment on February 2, 2023.
6 ECF No. 31. Having successfully completed treatment, Defendant has filed a
7 motion for this Court to grant his release to reside at Congdon Canal Oxford House
8 in Yakima, Washington. ECF No. 33. Neither the United States Attorney's
9 Office, nor United States Probation/Pretrial Services Office have any objection to
10 Defendant's release. *Id.*

11 Post-plea, presentencing matters are governed by 18 U.S.C. § 3143. Fed. R.
12 Crim. P. 46(c). Under that statute, a defendant "who has been found guilty of an
13 offense and who is awaiting imposition or execution of sentence" shall be detained
14 unless "the judicial officer finds by clear and convincing evidence that the person
15 is not likely to flee or pose a danger to the safety of any other person or the
16 community if released" 18 U.S.C. § 3143(a)(1). This burden of clear and
17 convincing evidence lies with the defendant. Fed. R. Crim. P. 46(c); *See United*
18 *States v. Loya*, 23 F.3d 1529, 1530 (9th Cir. 1994).

19 This Court has taken into account the nature and circumstances of
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1 conviction,¹ the weight of the evidence against the Defendant, as well as
2 Defendant's history and characteristics, including character, physical and mental
3 condition, family ties, employment, financial resources, length of residence in the
4 community, community ties, past conduct and history relating to alcohol and drug
5 abuse, and also criminal history, record concerning appearance at court
6 proceedings, whether Defendant was under supervision at the time of the alleged
7 offense, and the nature and seriousness of the danger to the community posed by
8 Defendant's release.

9 Considering Defendant's completion of inpatient treatment and the
10 agreement of both the United States Probation/Pretrial Services Office and the
11 United States Attorney's Office with release, the Court finds that Defendant has
12 established by clear and convincing evidence conditions or a combination of
13 conditions of release that would reasonably assure Defendant will not flee.
14 Furthermore, Defendant has established by clear and convincing evidence
15 conditions or a combination of conditions of release that would mitigate the risk to
16 the safety of other persons or the community that Defendant poses.

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19 ¹ While 18 U.S.C. § 3143(a)(1) directs the Court to consider release conditions under 18
20 U.S.C. § 3142(c), this statute contemplates an offense charged, which is inapposite in the
context of supervised release.

1 Thus, the Court finds that Defendant's release to an Oxford House is
2 appropriate at this time; however, the Court declines to amend its prior Order (ECF
3 No. 31). Accordingly, **IT IS ORDERED:**

4 1. Defendant's Motion to Expedite (**ECF No. 35**) is **GRANTED**.

5 2. Defendant's Motion to Reopen Detention Hearing (**ECF No. 33**) is
6 **GRANTED IN PART AND DENIED IN PART**.

7 3. **Defendant shall be immediately released from custody.**

8 4. If a party desires this Court to readdress the issue of detention because
9 of material and newly discovered circumstances, that party shall file a maximum
10 four-page motion for reconsideration succinctly stating what circumstances are
11 new, how they are established, and the requested change in conditions of release.
12 The motion shall indicate whether opposing counsel; United States
13 Probation/Pretrial Services; or another party with a substantial interest in the
14 motion object, whether a hearing is desired, and whether a supplemental pretrial
15 services report is requested. If the moving party, after the exercise of due
16 diligence, is unable to determine the position of opposing counsel; United States
17 Probation/Pretrial Services; or another party with a substantial interest in the
18 motion, the moving party may in the alternative document the date; time; and
19 manner of each effort made to determine that party's position. This Court will
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1 treat the motion as expedited and submitted without argument, and will set a
2 hearing or issue other orders as may be appropriate.

3 5. If a party desires that another court review this order pursuant to 18
4 U.S.C. § 3145, that party shall promptly file a motion for review before the district
5 judge to whom the case is assigned, as further described in the Detention Order
6 Review Protocol published for the Eastern District of Washington. Both parties
7 shall cooperate to ensure that the motion is promptly determined.

8 6. Defendant is bound over to Chief Judge Stanley A. Bastian for further
9 proceedings.

10 7. Defendant shall abide by the following conditions at all times:

11 **STANDARD CONDITIONS OF RELEASE**

12 1. Defendant shall not commit any offense in violation of federal, tribal,
13 state, or local law. Defendant shall advise the supervising United States
14 Probation/Pretrial Services Officer and defense counsel within one business day of
15 any charge, arrest, or contact with law enforcement. Defendant shall not work for
16 the United States government or any federal or state law enforcement agency
17 unless Defendant receives the approval of the district court judge with original
18 jurisdiction over this matter and notifies the supervising United States
19 Probation/Pretrial Services Officer in the captioned matter.

1 2. Defendant shall immediately advise the Court and the United States
2 Attorney in writing before any change in address.

3 3. Defendant shall appear at all proceedings and surrender as directed for
4 service of any sentence imposed.

5 4. Defendant shall sign and complete form A.O. 199C before being
6 released.

7 5. Defendant shall not possess a firearm, destructive device, or any
8 dangerous weapons.

9 6. Defendant shall report to the United States Probation/Pretrial Services
10 Office before or immediately after release and shall report as often as they direct,
11 at such times and in such manner as they direct.

12 7. Defendant shall contact defense counsel at least once a week.

13 8. Defendant shall refrain from use or unlawful possession of a narcotic
14 drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed
15 by a licensed medical practitioner in conformance with Federal law. Defendant
16 may not use or possess marijuana, regardless of whether Defendant has been
17 authorized medical marijuana under state law.

18 9. Defendant shall surrender any passport to United States
19 Probation/Pretrial Services and shall not apply for a new passport.
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1 10. Defendant is further advised it is unlawful for any person who is
2 under indictment for a crime punishable by imprisonment for a term exceeding one
3 year, to receive, ship or transport in interstate or foreign commerce any firearm or
4 ammunition or receive any firearm or ammunition which has been shipped or
5 transported in interstate or foreign commerce.

6 **SPECIAL CONDITIONS OF RELEASE**

7 1. Defendant shall remain in the Eastern District of Washington unless
8 given permission by the United States Probation/Pretrial Services Office.

9 2. Defendant shall notify the United States Probation/Pretrial Services
10 Office within 24 hours of any change in address, telephone number, or
11 employment.

12 3. Defendant shall avoid all contact, direct or indirect, with any
13 codefendants or persons who Defendant would reasonably know are or may
14 become a victim or potential witness in the subject investigation or prosecution.

15 4. Defendant shall maintain employment, or, if unemployed, shall
16 actively seek employment and/or maintain or commence an educational program.

17 5. Defendant shall have no contact, direct or indirect, with any known
18 gang members.

19 6. Defendant shall submit to a substance abuse evaluation and undergo
20 any recommended substance abuse treatment as directed by the United States

1 Probation/Pretrial Services Office. Prior to commencing any evaluation or
2 treatment program, Defendant shall provide waivers of confidentiality permitting
3 the United States Probation/Pretrial Services Office and the treatment provider to
4 exchange without qualification, in any form and at any time, any and all
5 information or records related to Defendant's conditions of release and
6 supervision, and evaluation, treatment, and performance in the program. It shall be
7 the responsibility of defense counsel to provide such waivers.

8 7. Defendant shall abstain totally from the use of alcohol.

9 8. Defendant shall submit to random urinalysis and Breathalyzer testing
10 as directed by the United States Probation/Pretrial Services Office. Defendant
11 shall refrain from obstructing or attempting to obstruct or tamper, in any fashion,
12 with the efficiency and accuracy of any prohibited substance testing which is
13 required as a condition of release.

14 9. Defendant shall not operate a motor vehicle without a valid driver's
15 license.

16 10. Defendant shall submit to a mental health evaluation and undergo any
17 recommended treatment as directed by United States Probation/Pretrial Services.
18 Prior to commencing any evaluation or treatment program, Defendant shall provide
19 waivers of confidentiality permitting the United States Probation/Pretrial Services
20 office and the treatment provider to exchange without qualification, in any form

1 and at any time, any and all information or records related to Defendant's
2 conditions of release and supervision, and evaluation, treatment, and performance
3 in the program. It shall be the responsibility of defense counsel to provide such
4 waivers.

5 **IT IS SO ORDERED.**

6 DATED March 6, 2023.



Alexander C. Ekstrom

ALEXANDER C. EKSTROM

UNITED STATES MAGISTRATE JUDGE

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